

McCain	Obama	Sarbanes
Menendez	Pryor	Schumer
Mikulski	Reed	Sununu
Murray	Reid	Thune
Nelson (FL)	Rockefeller	Wyden
Nelson (NE)	Salazar	

## NOT VOTING—

Inouye

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader is recognized.

Mr. FRIST. Mr. President, I enter a motion to reconsider the last vote.

The PRESIDING OFFICER. The motion to reconsider is entered.

Mr. FRIST. Mr. President, I switched my vote from a "yes" to a "no" vote. Without my switching the vote, it would have been 59 to 40. We have one absentee tonight, and that may well have determined which way this particular vote had gone. Thus, I switched my vote from a yea to a nay, thus the vote was 58 to 41. That allows us to, at some point in the future, have the option to reconsider the motion. We will make a decision on that at some point in the future.

The PRESIDING OFFICER. The point of order against the bill is sustained. Pursuant to section 312(f) of the Budget Act, the bill is recommitted to the Judiciary Committee.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

---

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006—MOTION TO PROCEED

Mr. FRIST. Mr. President, in a few moments I will have a very brief statement about what went on with the vote on the asbestos bill, but for our colleagues, I wish to outline where we are going tonight and over the next several days.

Calendar No. 360, S. 2271, is the USA PATRIOT Act Additional Reauthorizing Amendments Act. This bill addresses some of the concerns of Members on both sides of the aisle as it relates to the PATRIOT Act. I believe that we strongly support it and we are prepared to consider this measure next.

Therefore, I now ask unanimous consent that the Senate proceed to the consideration of S. 2271, the USA PATRIOT Act Additional Reauthorizing Amendments Act of 2006.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, on behalf of Senator FEINGOLD, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I had hoped we would at least be able to proceed to that bill tonight. As our colleagues know, this bill is ready to go. It is an important bill. It is important for the safety and security of the American people. It is a bill we have worked on for a long period of time, and we believe there is overwhelming support for this bill. The consent I asked for was for the Senate to begin consideration of that legislation. We had the objection from the other side of the aisle that was expressed.

I now move to proceed to S. 2271. The motion to proceed is now pending and is debatable. We have been told that there will be an effort to filibuster the motion to proceed. Therefore, I now send a cloture motion to the desk and ask for its consideration.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

## CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 2271: to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive National Security Letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Bill Frist, James Inhofe, Richard Burr, Christopher Bond, Chuck Hagel, Saxby Chambliss, John E. Sununu, Wayne Alldredge, Johnny Isakson, John Cornyn, Jim DeMint, Craig Thomas, Larry Craig, Ted Stevens, Lindsey Graham, Norm Coleman.

Mr. FRIST. Mr. President, again, the motion is pending, and if the Senators desire to debate the motion they should be prepared to do so. The Chair is obligated to put the question. I put Members on notice that they should remain on the floor if they feel the need to hold up this important legislation; otherwise, we will be proceeding to the underlying bill.

Mr. FRIST. Mr. President, with respect to the vote we took minutes ago on the asbestos legislation, it does mean that legislation is, in essence, off the floor now, and that we are proceeding with the consideration of the PATRIOT Act, although we have an obstruction underway and we have a threatened filibuster underway, and we will address that in the coming days.

The vote on the motion to waive the point of order on the asbestos bill was 59 to 40. In order to have the option to keep a heartbeat at least in this piece of legislation, because it is so important to victims, to our economy, to jobs, what I did, as an advocate for the Specter-Leahy bill, is I switched my vote from yes to no. From a procedural standpoint, what that allows me to do as leader is to bring that back to the

floor at some appropriate time if there is indication to do so in the future.

We did have one absentee vote tonight that could have made the difference, and with that I switched my vote. I do want to make it very clear, because there is always misunderstanding in terms of when a Senator switches his vote, I strongly support the Specter-Leahy bill, and I switched my vote for procedural reasons.

So this vote did reflect 59 to 40 on the floor, although the actual vote is depicted as 58 to 41.

Let me also add, and I think I speak for the majority of my colleagues, that I am disappointed in the fact we are not able to proceed with this asbestos litigation bill. The consequence of this vote tonight is that victims who are in need are not going to receive fair and just compensation. They deserve it. They need it. The problem has been clearly spelled out on the floor of this body.

We have made progress over the last couple of weeks in that people recognize this is a serious problem that has gone on for too long, yet has to be addressed in a legislative way, that it denies justice to victims, that it hurts and punishes our economy and, unless it is addressed, will continue to destroy jobs in this country.

Unfortunately, by refusing to move forward on this bipartisan bill, a bipartisan bill, the Senate chose to protect special interest groups rather than the interests of those innocent victims who deserve more. The cost to our society will be felt unless it is addressed sometime in the future.

I do thank all of those who acknowledge there is a real and serious problem that Congress should debate, and it must be resolved at some point in the future.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I wish to address the issue that was just considered before the Senate and say that I hope, now, that we can work together on a bipartisan basis to find some accommodation—not to create a trust fund, in an amount that has never been established, with contributions that have never been disclosed publicly but, rather, something that is much more open and transparent.

The starting point is obvious. Some States have already addressed this issue with significant changes in the existing tort system that make it more fair and quicker for victims to get compensation. I think that is the way to address this, and I hope that now we can have an effort by Members from both sides of the aisle on a bipartisan basis to establish this.

I do quarrel with the leader's conclusion that special interests defeated this legislation. Let's be very honest with the American people. This bill was a clash of the special-interest titans on both sides. Senator BENNETT of Utah, on the other side of the aisle, whom I respect very much, came to the floor

and listed 10 major corporations that, with the passage of this legislation, would have saved \$20 billion in liability—\$20 billion that they would otherwise have to pay to victims of asbestos exposure around America. To say that everyone opposing this bill was a special interest but 10 companies that were \$20 billion ahead if this bill passed were not special interests defies a rational explanation.

I would also add that I think we have to consider the fact that when we come down to consider this bill, there is going to have to be give and take on both sides, and I hope we can reach that point. Those in the legal community, as well as those who represent the businesses and insurance companies who have stakes in this fight, have to be willing to give some ground and to work toward compromise.

I came to Congress years ago, and when I arrived the first issue with which I was confronted was asbestos. It is still here today and there are more victims today and we have to find a reasonable way to help those victims.

I am heartened by Senator CORNYN of Texas, who has been willing to come to this floor and talk about the medical criterion alternative. I don't know if we can reach an agreement, but I sure want to try. I have said to my colleagues on this side of the aisle who did not agree with the disposition on the last vote that we should put our heads together and see if we can come out with a reasonable answer to this challenge we face. I sincerely hope that can be done.

I do have to say I wish the first bill we were considering would not have been this so-called Armageddon of the special interest groups. Wouldn't it have been much better for us to have considered Medicare prescription drug Part D reform when we have millions of seniors across America struggling to understand this complicated system, wrestling with plans that may offer the drugs that they need for their life-and-death situations; wanting the pharmacies they have always trusted to be included; hoping that they can pay the price of this plan?

I hear from these people every day. You would think that Members on both sides of the aisle would be receiving these phone calls and, if they have, you wonder why that was not the first bill that was brought up. It would have been a reasonable thing. Some have even suggested we should have brought up ethics reform before we did anything else, and we have introduced a bill on the Democratic side that will try to move toward significant ethics reform. I hope those on the Republican side who feel the same way will join us and make their own suggestions. But shouldn't we move to that legislation? That may not be popular with some of the power brokers in this town, but if we want to restore the confidence of the American people in Congress and the people who work here, it certainly ought to be high on their agenda.

There again is another issue that we have not considered—ethics. Medicare; prescription drugs Part D; addressing the issue of LIHEAP—that's the Low Income Heating and Energy Assistance Program—are critically important across the Nation. We left that undone—underfunded from last Congress. I think there is bipartisan support—I know there is—for us to return to that issue, another one which will help a lot of needy families, vulnerable Americans across our Nation who are faced with staggering and record heating bills. That, again, is an issue that does not have a special interest constituency, but it is certainly one that families are concerned about across our country.

I know we are not ready to bring up the issue of health care because we need to do some work on it. For 5 years, we have done virtually nothing and the cost of health insurance has gone up, the coverage has gone down, people are more vulnerable today than they were a few years ago and more people are uninsured. We ought to be talking about reasonable bipartisan efforts to deal with health insurance and making it more affordable and more accessible for every American family. That is something that could be done.

When some come to the floor and say: This is the No. 1 issue facing Congress, the people I represent think there are other issues far more important, issues that relate to their everyday lives and the livelihoods of their families. I hope we can return to those issues.

We have expended a lot of effort and energy on this issue. Perhaps by working on a bipartisan basis we can find a way through this. But in the meantime, let's take up some of these equally important, if not more important, issues for families across America.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### HONORING OUR ARMED FORCES

SPECIALIST ALLEN KOKESH, JR.

Mr. JOHNSON. Mr. President, today I pay tribute to Specialist Allen Kokesh, Jr. who died on February 7, 2006, from injuries sustained while serving in

Iraq. He was a member of Charlie Battery, First Battalion 147th Field Artillery Brigade of Yankton.

Specialist Kokesh was one of five South Dakota National Guard members involved in a roadside bomb attack on December 4, 2005, en route to Baghdad. Two soldiers were killed in the immediate aftermath, Sergeant First Class Richard Schild and Staff Sergeant Daniel Cuka. Specialist Kokesh suffered severe wounds, and after being medically evacuated out of Iraq, he was transferred to the Brook Army Medical Center at Fort Sam Houston in San Antonio, TX.

Sadly, Specialist Kokesh didn't recover from his wounds and died after developing severe complications. He was a graduate of Yankton High School and is remembered as a scholar athlete. In fact, he was a member of the Yankton High School championship football team that won the 2002 Class 11AA State title. The leadership skills Specialist Kokesh demonstrated during high school were clearly evident when he joined the South Dakota National Guard that same year. He even successfully convinced a fellow classmate, and member of his football team, to join the National Guard the following year.

While I am deeply saddened by the loss of any military member serving in defense of our great Nation, the loss of the brave soldiers in the 147th hits close to home. My oldest son, Brooks, served in that unit prior to joining the Army as an enlisted soldier with the 101st Airborne Division. On behalf of my entire family, I extend our heartfelt condolences to Specialist Kokesh's family and friends.

Specialist Kokesh's commitment to his fellow members of the South Dakota National Guard, as well as all those who served in uniform with him, is a testament to the strength of his character and the family that instilled in him these values. His dedicated service to our grateful Nation will never be forgotten.

#### DEFENSE AUTHORIZATION, 2006

Mr. LEVIN. Last week, Senator KYL placed a statement in the CONGRESSIONAL RECORD regarding the Graham-Levin amendment, which was enacted last year as section 1405 of the National Defense Authorization Act for Fiscal Year 2006 and as section 1005 of the Detainee Treatment Act of 2005, as included in the Department of Defense Appropriations Act, 2006. Senator KYL and Senator REID cosponsored the Graham-Levin amendment in the Senate.

Senator KYL argues that this provision was intended to retroactively strip the Federal courts, including the Supreme Court, of jurisdiction over pending cases. Senator KYL's statement attached a January 18, 2006, letter from Senator KYL and Senator GRAHAM to Attorney General Gonzales, which makes the same argument.

As I stated when the Graham-Levin amendment was before the Senate and